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SIRIUS XM RADIO INC.

17 UNITED STATES DISTRICT COURT

18 NORTHERN DISTRICT OF CALIFORNIA

19 SAN FRANCISCO DIVISION

20 CATCH A WAVE TECHNOLOGIES,
21 INC.,

22 Plaintiff,

23 v.

24 SIRIUS XM RADIO INC.,

25 Defendant.

Case No. 3:12-cv-05791-WHA

**JOINT STIPULATION REGARDING
DISCOVERY AND CASE SCHEDULE
AND ~~PROPOSED~~ ORDER**

DEMAND FOR JURY TRIAL

1 Pursuant to the Case Management Conference held on February 14, 2013, the parties to
2 the above-titled action jointly submit this Joint Stipulation Regarding Discovery and Case
3 Schedule.

4 **1. Discovery**

5 The following limitations and guidelines on discovery under the Federal Rules of Civil
6 Procedure and the local rules will govern this case:

- 7 (a) Changes to the timing, form, or requirement for disclosures under Rule
8 26(a), including a statement of when initial disclosures were made or will
be made.

9 The parties exchanged initial disclosures pursuant to Rule 26(a)(1) on February 21, 2013.

10 The timing for expert disclosures under Rule 26(a)(2) and pretrial disclosures under Rule
11 26(a)(3) are set forth in the schedule below.

- 12 (b) Any issues about disclosure or discovery of electronically stored
13 information, including the form or forms in which it should be produced.

14 The parties agree that documents will be produced in single-page TIFF format with full-
15 text extraction and Ringtail load files, Concordance load files or similar files. If there is no
16 extractable text, the producing party shall perform Optical Character Recognition (“OCR”) on the
17 document and provide the associated text file.

18 If it is impracticable to produce a document in TIFF format, the producing party has the
19 option of producing such document in native format. Native files need not be produced absent a
20 showing of good cause. To the extent a receiving party identifies other files (for example, MS-
21 Excel spreadsheets and MS-Access databases) from the TIFF production set for which data
22 manipulation or analysis may be necessary, the parties agree to meet and confer in good faith to
23 coordinate possible supplemental production of the native version of those files.

- 24 (c) Any issues about claims of privilege or of protection as trial-preparation
25 materials, including — if the parties agree on a procedure to assert these
26 claims after production — whether to ask the court to include their
agreement in an order.

27 The parties agree that neither party will produce nor list on any privilege log any item
28 protected by any privilege, immunity, or protection that occurred or was/is created on or after the

1 filing date of this litigation. Subject to the foregoing, issues relating to claims of privilege or of
 2 protection as trial-preparation material shall be addressed as provided in the Federal Rules of
 3 Civil Procedure and as provided in the protective order to be entered.

4 (d) Changes that should be made in the limitations on discovery imposed
 5 under these rules or by local rule, and what other limitations should be
 imposed.

6 A. Interrogatories

7 The parties agree that each side may propound 25 interrogatories.

8 B. Request for Admissions

9 Excluding requests for admission for purposes of authentication, the parties agree that each
 10 side may propound 50 requests for admission. Notwithstanding the foregoing, there is no limitation
 11 on the number of requests for admission that a document: (i) is authentic; (ii) is a business record; or
 12 (iii) otherwise meets a condition of admissibility into evidence.

13 C. Requests for Production of Documents and Things

14 Pursuant to the Court's Order, each side may propound 50 requests for production of
 15 documents and things.

16 D. Depositions

17 The parties agree that each side may have 70 hours of deposition time with a maximum of
 18 ten depositions ("the deposition limit"). Depositions will not last longer than 7 hours on the
 19 record per day unless agreed to by the parties.

20 Both individual depositions and depositions pursuant to F.R.C.P. 30(b)(6) count against
 21 the deposition limit. Expert and third-party depositions do not count against the deposition limit.

22 Individual Depositions:

23 The parties agree that individual depositions are limited to 7 hours of deposition time,
 24 except for the inventors who may be deposed up to 14 hours on two consecutive days if
 25 necessary.

26 Individual depositions requiring an interpreter are limited to 14 hours of deposition time
 27 and will be conducted on two consecutive days. Individual depositions requiring an interpreter
 28 count as half time against the deposition limit.

1 Fed. R. Civ. P. 30(b)(6) Depositions:

2 The parties agree that there is no limit on the number of topics and no limit on the amount
3 of time for deposition pursuant to F.R.C.P. 30(b)(6) as long as the deposition limit has not been
4 met. There is no requirement to separately transcribe a deposition of an individual who also
5 testifies pursuant to F.R.C.P. 30(b)(6). Depositions pursuant to F.R.C.P. 30(b)(6) requiring an
6 interpreter count as half time against the deposition limit.

7 Third Party Depositions:

8 The parties agree that each side is limited to 70 hours of deposition time for third party
9 depositions.

10 Expert Depositions:

11 The parties agree that depositions of experts are limited to 7 hours of deposition time for each
12 subject matter opinion submitted by the expert, such as infringement, invalidity, unenforceability, and
13 damages.

14 E. Protective Order

15 The parties discussed requesting a protective order during the Rule 26(f) conference and
16 are in the process of negotiating the terms of a stipulated protective order based on the Northern
17 District of California's model.

18 In the meantime, Patent Local Rule 2-2 will govern the production of confidential
19 information.

20 F. Discovery from Experts

21 The parties agree that neither party need produce communications between counsel and
22 expert witnesses or drafts of expert reports. However, if the expert relies upon communications
23 with counsel to support his or her opinion, the communication is discoverable.

24 G. Service

25 The parties consent to service via email pursuant to F.R.C.P. 5(b)(2)(E).

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2. Case Schedule

The following chart provides the schedule for the case:

Event	Date per rule or order	Dates
Pat. L.R. 3-3. Invalidity Contentions	Not later than 45 days after service upon it of the	April 15, 2013
Pat. L.R. 3-4. Document Production Accompanying Invalidity Contentions.	"Disclosure of Asserted Claims and Infringement Contentions"	
Pat. L.R. 4-1. Exchange of Proposed Terms for Construction.	Not later than 14 days after service of the "Invalidity Contentions" pursuant to Patent L.R. 3-3	April 29, 2013
Last day to join parties or amend pleadings	Per C.M. Order (D.I. 32).	April 30, 2013
Pat. L.R. 4-2. Exchange of Preliminary Claim Constructions and Extrinsic Evidence.	Not later than 21 days after the exchange of the lists pursuant to Patent L.R. 4-1	May 20, 2013
Pat. L.R. 4-3. Joint Claim Construction and Prehearing Statement.	Not later than 60 days after service of the "Invalidity Contentions,"	June 14, 2013
Mediation Complete	Per C.M. Order (D.I. 32).	June 28, 2013
Pat. L.R. 4-4. Completion of Claim Construction Discovery (including depositions of experts who submitted declarations in support of claim construction positions)	Not later than 30 days after service and filing of the Joint Claim Construction and Prehearing Statement,	August 23, 2013
Pat. L.R. 4-5(a). Claim Construction Briefs – opening brief	Not later than 45 days after serving and filing the Joint Claim Construction and Prehearing Statement	September 6, 2013
Pat. L.R. 4-5(b). Claim Construction Briefs – responsive brief	Not later than 14 days after service of an opening brief	September 20, 2013
Pat. L.R. 4-5(c). Claim Construction Briefs – reply brief	Not later than 7 days after service of a responsive brief	September 27, 2013
Deadline for producing opinions of counsel per Pat. L.R. 3-8	Per C.M. Order (D.I. 32).	January 3, 2014
Deadline for disclosing Issues to be Offered for Expert Testimony/Expert Witnesses (FRCP 26(a)(2)(A) & 26(a)(2)(E)).	Per C.M. Order (D.I. 32).	January 3, 2014
Close of fact discovery	Per C.M. Order (D.I. 32).	January 31, 2014
Opening expert reports	Per C.M. Order (D.I. 32).	January 31, 2014

Event	Date per rule or order	Dates
Opposition expert reports	Per C.M. Order (D.I. 32).	February 14, 2014
Reply expert reports	Per C.M. Order (D.I. 32).	February 21, 2014
Deadline for Dispositive Motions	Per C.M. Order (D.I. 32).	February 27, 2014
Close of expert discovery	Per C.M. Order (D.I. 32).	March 7, 2014
Pretrial Disclosures pursuant to FRCP 26(a)(3)	Per C.M. Order (D.I. 32).	April 18, 2014
Pretrial Conference	Per C.M. Order (D.I. 32).	May 5, 2014 at 2:00 p.m.
Trial	Per C.M. Order (D.I. 32).	May 19, 2014 at 7:30 a.m.

Respectfully submitted,

FREITAS TSENG & KAUFMAN LLP

Dated: July 26, 2013

By: /s/ Qudus. B. Olaniran

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Respectfully submitted,

Dated: July 26, 2013

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PROPOSED ORDER

IT IS ORDERED that the foregoing Agreement is approved.

Dated: July 29, 2013.



HON. WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE